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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,871	09/30/2003	Francis Busch JR.		6788

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THEODORE C. JAY
APARTMENT 600
16 NORTH CHATSWORTH AVE.
LARCHMONT, NY 10538

EXAMINER
CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
1615	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/675,871	Applicant(s) BUSCH, FRANCIS	
	Examiner Lakshmi S. Channavajjala	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claims 1-5 are pending in the instant application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,726,729 ('729) to Patel in view of US 5,474,578 to Chan et al ('578) or Chan in view of Patel or unpatentable over US 5,474,578 ('578) to Chan et al in view of US 6,010,990 to Rouso et al ('990) or '729 to Patel in view of '990 to Rouso.

Instant claims are directed to a method of increasing the health and appearance of the hair and scalp by supplying oxygen directly to the scalp and hair, comprising wetting the hair, applying to the scalp and hair a shampoo having a pH of 8 to 11 and followed by applying to the scalp a conditioning cream containing 1% to 4% hydrogen peroxide, wherein the pH of the scalp and hair remains at pH of 8 to 10.

'729 teaches a method of permanently dyeing hair comprising subjecting the hair to a treatment wherein the hair is contacted with a freshly made mixture of a) an oxidative dye intermediate in a shampoo base at an alkaline pH and b)

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an oxidative compound in a shampoo or a conditioner base at acidic pH (col. 11, L 20-62; col. 12, L 58 through col. 13, L 20 and example 1 in col. 14). '729 teach packing the above two parts separately in a kit and freshly mix before using or even mix on the scalp itself because the oxidizing part is unstable (col. 11, 33-35). '729 further teach incorporating the claimed surfactants (col. 9-10). '729 teach that the treatment time varies between 10 seconds to two minutes, thus suggesting that the oxidizing agent of part aii should be released within 10 seconds to 2 minutes. While '729 fails to teach the claimed conditioner cream, adjusting pH sodium carbonate (teaches sodium hydroxide –see example 1), '729 teaches the concept of applying a hydrogen peroxide containing conditioner base to the scalp after or along with a shampoo base, wherein the shampoo has alkaline pH. '729 does not teach the claimed limitation of maintaining the pH of the hair and scalp at an alkaline pH after applying the hydrogen peroxide composition and instead teaches that the part aii) is acidic.

'578 teaches an erasable hair dyeing process comprising contacting hair with a dye present in a shampoo base that imparts a second color to the hair that already has a color and subsequently contacting alkaline peroxide (3% hydrogen peroxide), wherein the visual appearance of the hair color imparted by the dye is restored (abstract, col. 3, L 34-col. 4, L 60, example 5 in col. 8). Thus, both '729 and '578 teach hair dyeing compositions for imparting the desired color strength to the hair by applying hydrogen peroxide after the hair dyeing step, wherein the hair dye is present in a shampoo base. While '729 teach that the shampoo has an alkaline pH, '578 teach that the hydrogen peroxide containing composition is

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in an alkaline pH. '578 further teach that hydrogen peroxide treatment imparts a visual appearance retaining the first color. Thus, in the absence of any unexpected advantage of maintaining the alkaline pH after peroxide treatment, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to adjust the pH of the peroxide containing composition to also to an acidic or an alkaline level and still achieve the desired hair color.

Alternatively, '578 do not teach maintaining alkaline pH of the shampoo containing the dye.

'990 teaches a hair shampoo or conditioner composition in the form of lotions, creams etc., wherein the composition has an alkaline pH of 8 to 10 (abstract, col. 2, L 37-68, col. 3, L 10-40). The composition of '990 comprises surfactants (col. 5-6), cationic polymers etc (examples). It would have been obvious for one of an ordinary skill in the art at the time of the instant invention to adjust the pH of the shampoo and hydrogen peroxide containing composition of '729 or '578 because '990 suggests that the alkaline pH (8 to 10) imparts body, fullness and texture to the fine hair in a very short time i.e., one minute or less (last lines of col. 2). Thus, one of an ordinary skill in the art would have expected to increase visual and tactile properties of hair i.e., thickness and texture by adjusting the pH of the composition to an alkalinity.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone


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number is 571-272-0591. The examiner can normally be reached on 7.00 AM - 4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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December 29, 2006


LAKSHMI S. CHANNAVAJJALA
PRIMARY EXAMINER